MONTANA LEGISLATIVE HISTORY

Chapter 412 ~~19~~ 2003

Bill H _____ S 389 Original bill & history X C

H. Committee on BUSINESS & LABOR			S. Committee on JUDICIARY		
Hearing Date(s)	4/1	X C	Hearing Date(s)	2/19	X C
EXEC. ACTION	4/2	X C	EXEC ACTION	2/20	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Bill Draft Number: LC1975
Bill Type - Number: SB 389
Short Title: Alternative dispute resolution for residential construction contracts
Primary Sponsor: Dan McGee

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 44

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/18/2003			
(S) Signed by Governor	04/17/2003			
(S) Transmitted to Governor	04/14/2003			
(H) Signed by Speaker	04/11/2003			
(S) Signed by President	04/11/2003			
(S) Returned from Enrolling	04/09/2003			
(C) Sent to Printing	04/09/2003			
(S) Sent to Enrolling	04/08/2003			
(H) Returned to Senate	04/05/2003			
(H) 3rd Reading Concurred	04/05/2003	61	37	
(H) Scheduled for 3rd Reading	04/05/2003			
(H) 2nd Reading Concurred	04/04/2003	70	29	
(H) Scheduled for 2nd Reading	04/04/2003			
(H) Committee Report--Bill Concurred	04/02/2003			(H) Business and Labor
(H) Committee Executive Action--Bill Concurred	04/02/2003	15	3	(H) Business and Labor
(H) Hearing	04/01/2003			(H) Business and Labor
(H) Referred to Committee	03/07/2003			(H) Business and Labor
(H) First Reading	03/07/2003			
(S) Transmitted to House	02/25/2003			
(S) 3rd Reading Passed	02/25/2003	49	0	
(S) Scheduled for 3rd Reading	02/25/2003			
(S) 2nd Reading Passed on Voice Vote	02/24/2003	49	0	
(S) Scheduled for 2nd Reading	02/24/2003			
(C) Sent to Printing	02/21/2003			
(S) Committee Report--Bill Passed as Amended	02/21/2003			(S) Judiciary
(S) Committee Executive Action--Bill Passed as Amended	02/21/2003	9	0	(S) Judiciary

(S) Hearing	02/19/2003	(S) Judiciary
(C) Introduced Bill Text Available Electronically	02/13/2003	
(S) Referred to Committee	02/13/2003	(S) Judiciary
(S) First Reading	02/13/2003	
(S) Introduced	02/13/2003	
(C) Draft Delivered to Requester	02/12/2003	
(C) Draft Ready for Delivery	02/10/2003	
(C) Draft in Assembly/Executive Director Review	02/08/2003	
(C) Draft in Final Drafter Review	02/07/2003	
(C) Bill Draft Text Available Electronically	02/07/2003	
(C) Draft in Input/Proofing	02/07/2003	
(C) Draft to Drafter - Edit Review [CMD]	02/06/2003	
(C) Draft in Edit	02/05/2003	
(C) Draft in Legal Review	02/04/2003	
(C) Draft to Requester for Review	01/30/2003	
(C) Draft Back for Requester Changes	01/30/2003	
(C) Draft to Requester for Review	01/22/2003	
(C) Draft Request Received	01/09/2003	

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Thomas	Fred
Drafter	Lane	Valencia
Primary Sponsor	McGee	Dan

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Civil Procedure		Simple	CIV
Contracts (see also: Public Contracts)		Simple	CONT

Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: N

Session Law Ch. Number: 412
DEADLINE
Category: General Bills
Transmittal Date: 02/28/2003
Return (with 2nd house amendments) Date: 04/05/2003

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-OCT-03	

Senate BILL NO. 389

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE FOR RESIDENTIAL CONSTRUCTION DISPUTES; REQUIRING A CLAIMANT WITH AN ALLEGED CONSTRUCTION DEFECT TO FILE A NOTICE OF CLAIM WITH THE CONSTRUCTION PROFESSIONAL THAT THE CLAIMANT ASSERTS IS RESPONSIBLE FOR THE DEFECT AND PROVIDING THE CONSTRUCTION PROFESSIONAL WITH THE OPPORTUNITY TO RESOLVE THE CLAIM WITHOUT LITIGATION; LIMITING DAMAGES THAT CAN BE RECOVERED IN RESIDENTIAL CONSTRUCTION DISPUTES; AND AMENDING SECTION 27-2-208, MCA."

WHEREAS, the Legislature finds that Montana needs an alternative method to resolve legitimate construction disputes that would reduce the need for litigation while adequately protecting the rights of homeowners; and

WHEREAS, the Legislature determines that an effective alternative dispute resolution mechanism in certain construction defect matters should require the claimant to file a notice of claim with the construction professional that the claimant asserts is responsible for the defect and providing the construction professional with the opportunity to resolve the claim without litigation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Residential construction disputes -- definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) (a) "Action" means any civil lawsuit or action in contract or tort for damage or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction or remodeling of a residence.

(b) The term does not include a civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means a unit owners' organization or a nonprofit corporation created to own and

operate portions of a planned community that has the power to require unit owners to pay the costs and expenses incurred in the performance of the association's obligations.

(3) "Claimant" means a homeowner or association that asserts a claim against a construction professional concerning a defect in the construction or remodeling of a residence.

(4) "Construction defect" means a deficiency in or arising out of the design, specifications, surveying, planning, supervision, inspection, construction, or remodeling of a residence that results from any of the following:

(a) defective materials, products, or components used in the construction or remodeling of a residence;

(b) violation of the applicable building, plumbing, or electrical codes in effect at the time of the construction or remodeling of a residence;

(c) failure to construct or remodel a residence in accordance with accepted trade standards.

(5) "Construction professional" means an architect, builder, builder vendor, contractor, subcontractor, engineer, or inspector performing or furnishing the design, specification, surveying, supervision, inspection, construction, remodeling, or observation of the construction or remodeling of any improvement to real property, whether operating as a sole proprietor, partnership, corporation, or other business entity.

(6) (a) "Homeowner" means:

(i) any person, company, firm, partnership, corporation, or association who contracts with a construction professional for the remodeling, construction, or construction and sale of a residence; or

(ii) an association as defined in this section.

(b) The term homeowner includes but is not limited to a subsequent purchaser of a residence from any homeowner.

(7) "Residence" means a single-family house or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system.

(8) "Serve" or "service" means personal service or delivery by certified mail to the last-known address of the addressee.

(9) "Unforseen act of nature" means:

(a) a weather condition or earthquake, the magnitude of which exceeds the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction; or

(b) an event such as war, terrorism, or vandalism.

NEW SECTION. **Section 2. Residential construction disputes -- notice and opportunity to repair -- tolling of statute of limitations -- presumption of compliance with construction standards.** (1) Prior to commencing an action against a construction professional for a construction defect, the claimant shall serve written notice of claim on the construction professional. The notice of claim must state that the claimant asserts a construction defect claim against the construction professional and must describe the claim in reasonable detail sufficient to determine the general nature of the defect. If a written notice of claim is served under this section within the time prescribed for the filing of an action under 27-2-208, the statute of limitations for construction-related claims is tolled until 60 days after the period of time during which the filing of an action is barred.

(2) Within 21 days after service of the notice of claim, the construction professional shall serve a written response on the claimant. The written response must:

(a) propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified timeframe. The proposal must include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;

(b) offer to compromise and settle the claim by monetary payment without inspection; or

(c) state that the construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

(3) (a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2), the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(b) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2), the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the notice of rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within 30 days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at any time after that date the construction professional may terminate the proposal or offer by serving written notice on the claimant. The claimant may, after service, bring an action against the construction professional for the construction defect claim described in the notice of claim.

(4) (a) If the claimant elects to allow the construction professional to inspect in accordance with the

construction professional's proposal pursuant to subsection (2)(a), the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect.

(b) Within 14 days following completion of the inspection, the construction professional shall serve on the claimant:

(i) a written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of the construction;

(ii) a written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b);

(iii) a written offer to remedy the claim through a combination of repair and monetary payment pursuant to subsection (2)(b); or

(iv) a written statement that the construction professional will not proceed further to remedy the alleged defect.

(c) If the construction professional does not proceed further to remedy the alleged construction defect within the agreed-upon time or if the construction professional fails to comply with the provisions of subsection (4)(b), the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the claimant rejects the offer made by the construction professional pursuant to subsection (4)(b)(i) or (4)(b)(ii) to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within 30 days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the offer made pursuant to subsection (4)(b)(i) or (4)(b)(ii), then at any time after that date the construction professional may terminate the offer by serving written notice on the claimant.

(5) (a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4)(b)(i) shall do so by serving the construction professional with a written notice of acceptance within 30 days after receipt of the offer. The claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction according to the timetable stated in the offer.

(b) The claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including but not limited to repair of additional defects.

(6) Subsequently discovered claims of construction defects must be administered separately under this section and [section 4], unless otherwise agreed to by the parties.

(7) This section may not be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform within the time agreed upon pursuant to subsection (4)(b) or (5)(b).

(8) Compliance with the applicable building, plumbing, or electrical codes in effect at the time of construction or remodeling conclusively establishes construction in accordance with accepted trade standards with respect to all matters specified in those codes.

NEW SECTION. **Section 3. Admissibility.** The following are admissible in any action:

(1) a claimant's failure to provide a good faith notice to a construction professional as required by [section 2(1)];

(2) a claimant's failure to allow a reasonable inspection requested by a construction professional as required by [section 2(2)];

(3) a claimant's failure to provide a good faith, written response to a construction professional's offer as required in [section 2(3)]; or

(4) a construction professional's failure to respond in good faith to the claimant's notice as required by [section 2(2)].

NEW SECTION. **Section 4. Residential construction disputes -- limitation on damages.** (1) In a suit subject to [section 2] and this section, the claimant may recover only the following damages proximately caused by a construction defect:

(a) the reasonable cost of repairs necessary to cure any construction defect, including any reasonable and necessary engineering or consulting fees required to evaluate and cure the construction defect, that the contractor is responsible for repairing under [section 2];

(b) the reasonably necessary expenses of temporary housing during the repair period;

(c) the reduction in market value, if any, to the extent the reduction is due to structural failure; and

(d) reasonable and necessary attorney fees.

(2) If a construction professional fails to make a reasonable offer, as required under [section 2], fails to make a reasonable attempt to complete the repairs specified in an accepted offer, or fails to complete, in accordance with accepted trade standards, the repairs specified in an accepted offer, the limitations on damages and defenses to liability provided for in this section do not apply.

(3) If a claimant denies a request to inspect, as provided for in [section 2], unreasonably rejects an offer to remedy the construction defect, or does not permit the construction professional a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement, the claimant may not recover an amount in excess of:

(a) (i) the reasonable cost of the offered repairs that are necessary to cure the construction defect and that are the responsibility of the construction professional; or

(ii) the amount of a reasonable monetary settlement offer made under [section 2]; and

(b) the amount of reasonable and necessary attorney fees and costs incurred before the offer was rejected or considered rejected.

(4) The total damages awarded in a suit subject to [section 2] and this section may not exceed the greater of the claimant's purchase price for the residence or the current fair market value of the residence without the construction defect.

(5) A builder, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss, or liability if the builder can demonstrate any of the following affirmative defenses in response to the claimed construction defect:

(a) the defect is caused by an unforeseen act of nature that caused the structure not to meet the standard;

(b) the defect is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under [section 2]. This includes the failure to give timely notice to the builder after discovery of a construction defect but does not include damage due to the untimely or inadequate response of a builder to the homeowner's claim.

(c) the defect is caused by the homeowner or the homeowner's agent, employee, subcontractor, independent contractor, or consultant by virtue of failure to follow the builder's or manufacturer's

recommendations or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's recommended maintenance schedule, the builder shall show that the homeowner had written notice of these schedules and recommendations and that the recommendations and schedules were reasonable at the time they were issued.

(d) the defect is caused by the homeowner's, homeowner's agent's, or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect or by the structure's use for something other than its intended purpose;

(e) the time period for filing actions bars the claim;

(f) the action applies to a particular claim for which the builder has obtained a valid release;

(g) the builder's repair was successful in correcting the particular claimed construction defect to accepted trade standards; and

(h) regarding any causes of action to which [section 2] and this section do not apply, all applicable affirmative defenses are preserved.

(6) [Sections 1 through 4] do not supersede contractual alternative dispute resolution procedures contained in a contract between a claimant and a construction professional.

Section 5. Section 27-2-208, MCA, is amended to read:

"27-2-208. Actions for damages arising out of work on improvements to real property or land surveying. (1) Except as provided in [section 2(1)] and subsections (2) and (3) of this section, an action to recover damages (other than an action upon any contract, obligation, or liability founded upon an instrument in writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation of construction of any improvement to real property or resulting from or arising out of land surveying of real property may not be commenced more than 10 years after completion of the improvement or land surveying.

(2) Notwithstanding the provisions of subsection (1), an action for damages for an injury that occurred during the 10th year after the completion of the improvement or land surveying may be commenced within 1 year after the occurrence of the injury.

(3) The limitation prescribed by this section may not affect the responsibility of any owner, tenant, or person in actual possession and control of the improvement or real property that is surveyed at the time a right of action arises.

(4) As used in this section:

(a) "completion" means that degree of completion at which the owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier;

(b) "land surveying" means the practice of land surveying, as defined in 37-67-101.

(5) This section may not be construed as extending the period prescribed by the laws of this state for the bringing of any action."

NEW SECTION. **Section 6. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 70, chapter 19, part 4, and the provisions of Title 70, chapter 19, part 4, apply to [sections 1 through 4].

NEW SECTION. **Section 7. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

- END -

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on February 19, 2003 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused:

Sen. Gerald Pease (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 389, 2/14/2003; SB 373, 2/14/2003; SB 400, 2/14/2003;
Executive Action: SB 400

HEARING ON SB 389

Sponsor: **SEN. DAN McGEE, SD 11, Laurel.**

Proponents: **Byron Roberts, Montana Building Industry Association**
Curt Chisholm, Montana Building Industry Association
Bill Pierce, Self
Roger McGlenn, Executive Director Independent Insurance Agents' Association of Montana
Roger Halver, Montana Association of Realtors
Jacqueline Lenmark, American Insurance Association
Greg Van Horssen, State Farm Insurance Company
John Agnew, Western States Insurance Agency
Al Littler, Self

Opponents: **Al Smith, Montana Trial Lawyers' Association**

Opening Statement by Sponsor:

SEN. DAN McGEE brings SB 389, an alternative dispute resolution bill for disputes arising between contractors and people who own homes. This bill will place in code a process by which an aggrieved homeowner who has an issue with construction, can inform the contractor so appropriate action can be taken prior to litigation. This is called "a right to cure" bill. **SEN. McGEE** is bringing this bill on behalf of the Montana Building Industry Association and has support from all members of the contracting and construction arena.

Proponents' Testimony:

Mr. Byron Roberts, representing the Montana Building Industry Association, explained this legislation was developed to recent and ongoing events in the insurance industry, including the consequences of 9-11 and the nationwide proliferation of construction defect lawsuits nationwide. This has forced a number of insurance providers out of the market and also had a substantial affect on the availability and cost of contractor liability insurance. This has become a serious problem over the last year. New contractors are being turned down for coverage and, when coverage is available, there is a substantial increase in the cost of liability insurance. To address these issues, Montana Building Industry Association (MBIA) formed a working group about two years ago. This group came up with three recommendations. The first was the development of model contract

provisions. These would include warranties, dispute resolution, concealed conditions, right to cure, and homeowner and builder responsibilities for avoiding mold in new construction. Also included was the recommendation to develop model contracts between contractors and subcontractors to reduce liability. There is a publication which contains these model contracts. **EXHIBIT(jus37a01).**

The second recommendation concerned the development and implementation of continuing education programs for builders on issues such as general liability, mold, and effuse (?). The third recommendation involved legislation. Right-to-cure legislation recently passed in Arizona, Washington, and California and helped significantly to bring the insurance industry back around. This legislation provides a builder with the notice of a defect and the opportunity to fix the defect. It applies only to construction damage and does not apply to tort actions alleging personal injury or death.

Curt Chisholm, representing the Montana Building Industry Association, submitted a flow chart explaining the notification process contained in Section 2, as well as an outline of limitation of damages contained in Section 4. **EXHIBIT(jus37a02).**

Mr. Chisholm reviewed Exhibit 2 for the benefit of the Committee. **Mr. Chisholm** stated in 99.9 percent of cases where there is a defect in the construction of a home, the homeowner simply wants the defect fixed.

Bill Pierce, a residential building contractor in Helena, stated one of the primary reasons they are bringing forth this legislation is because the building industry is facing an insurance crisis. **Mr. Pierce's** insurance carrier would not renew his policy for the upcoming year, because the residential construction market was too risky due to huge and unreasonable lawsuit settlements from construction defect claims. Finally, he was able to locate a carrier, but the premium was 67 percent higher than the previous year even though his company had a clean record. The insurance underwriter informed him that the construction defect claims make this type of insurance policy risky. His company will pay $33,000 in general liability coverage, but will only build ten homes. **Mr. Pierce** feels this is unreasonable.

Roger McGlenn, Executive Director of the Independent Insurance Agents' Association of Montana, stated contractors' liability insurance is extremely difficult to find. This bill may not reduce rates because these rates are affected by many factors. However, he feels strongly that the passage of this legislation will help the increase of availability of insurance in Montana.

Roger Halver, representing the Montana Association of Realtors, stood in support of SB 389 for two reasons: This is a piece of legislation that seems like the most common-sense approach legislation this session. The second reason is because high-premium costs are passed on to homeowners, and Montana is in a crisis with affordable housing.

Jacqueline Lenmark, American Insurance Association, supports SB 389 because affordability and availability are problems in the insurance market for these types of premiums. Ms. Lenmark feels passage of this bill will increase availability.

Greg Van Horssen, State Farm Insurance Company, supports SB 389 and appreciates the dispute resolution provisions in the bill.

John Agnew, Western States Insurance Agency, listed insurance carriers in Montana which are no longer willing to underwrite general contractors' residential home building in Montana. Zurich, which was the largest policy provider, withdrew from Montana last April. Zurich had a substantial market share of this market, but decided to get out because of construction defects. Therefore, other carriers had to pick up the business. After a time, the other companies backed off the market. St. Paul and CNA, both large insurance companies who insure subcontractors such as plumbers and electricians, will not insure subcontractors who work on residential construction. **Mr. Agnew** spoke of a contractor in the Flathead Valley who paid $12,000 for insurance with Zurich. Zurich pulled out of the market, so the contractor was required this year to pay a premium of $120,000. The contractor declined the insurance.

Al Littler, a contractor from Billings, Montana, testified that in 1974 he and several others formed the Homeowners' Warranty Council (HOW Council) and developed a system to provide a written warranty on the product they built. Their subcontractors and supplies would stand behind that warranty. If there was a problem with the house, contractor and consumer would resolve the problem with the help of a panel of contractors. Every house he sells has a long written warranty stating what is covered, what is not covered, the contractor's responsibilities, and the responsibilities of the consumer. Sometimes, homeowners are responsible because they do not take care of the home. Builders are responsible for their work. There is no such thing as a standard one-year warranty. The written warranty must be provided by the builder. This bill proposes what has been successfully used in the marketplace for decades. SB 389 is good for builders and consumers.

Opponents' Testimony:

Al Smith, Montana Trial Lawyers' Association, questions whether the insurance industry is going to be writing Montana's laws and if their pricing practices will govern how laws are interpreted. **Mr. Smith** feels the insurance industry needs the reforms. **Mr. Smith** has questions with the limitation on damages for unforeseen acts of nature. He feels the contract standards should be in there as well. Also, **Mr. Smith** is concerned about Section 3, on page 5, regarding admissibility and why that section is needed. Also, in Section 4, he is not clear why the damages need to be specifically set out. **Mr. Smith** feels the Legislature should look at what is best for the people of Montana as opposed to just what the insurance industry dictates. **Mr. Smith** feels it is the insurance industry driving the increase rather than the experience rating in Montana. **Mr. Smith** feels most construction defects can be solved without litigation. **Mr. Smith** wonders what would happen if a person contracts for work which is above the industry standard and feels the cure should apply to the work you contracted for.

Questions from Committee Members and Responses:

SEN. WHEAT stated to **Mr. Pierce** that he senses **Mr. Pierce** has operated a pretty good business with virtually no major claims. Therefore, the premiums **Mr. Pierce** pays are not based on his claim history. It is, in effect, being driven by the insurance industry and whatever is happening across the country.

Mr. Pierce agreed, but he believes, fundamentally, the increase has been driven by over-zealous lawsuits and attorneys pursuing things to an unreasonable degree. **Mr. Pierce** feels the builders and homeowners should settle down and work on reaching a reasonable solution to construction defects. Contractors and homeowners can work out solutions for much less money.

SEN. WHEAT asked **Mr. Pierce** if this was a problem in the state of Montana. **Mr. Pierce** has had a number of his colleagues around the state who have said they feel disputes they were involved in could have settled if they would have been able to speak to the owner before the disputes got out of hand.

(Tape : 1; Side : B)

SEN. WHEAT summarized what he believes the building industry is seeking, which is if there is going to be a claim, the contractor should be notified, and then there should be an opportunity for

mediation or resolution of that dispute before a lawsuit is filed.

Mr. Pierce confirmed **SEN. WHEAT's** understanding is correct and they do not mean to preclude litigation if the contractor cannot adequately cure the defect.

SEN. WHEAT asked **Mr. Agnew** if he has any statistical information which demonstrates there is a crisis in Montana driving up the liability rates.

Mr. Agnew is not saying the data does not exist, but he does not have it. The issue is more of a spillover from outlying areas, and the fact is Montana only has a little less than a million people, but we are painted with the same brush as everyone else around the country. The insurance industry feels that what is happening around the country will eventually happen in Montana and there just is not enough insurance pool dollars to take care of those issues in Montana.

SEN. GARY PERRY asked **Mr. Halver** to tell him what effect the increased insurance costs to the builders have on affordable housing.

Mr. Halver spoke on behalf of the Realtors and the contractors and said as a finishing contractor his liability premium went from $400 per year to $700 a year, and when he renews his policy, he will have to pass that cost on to his customers. As far as the Realtors are concerned, impact fees have to be passed on, as well as increased insurance costs.

SEN. PERRY wanted to know if the insurance companies' rates are determined over a pool of several states' experiences and not just Montana's.

Mr. Agnew responded they are.

SEN. PERRY then quoted **Mr. Smith** and his reference to the laws being written by insurance companies, and his statement the insurance industry is driving the high premiums. **SEN. PERRY** would like to know if the insurance companies are the problem.

Mr. Agnew stated it comes down to insurance rates are actuarially set by past history. The rate is set with the forethought and knowledge there will be a claim. There must be enough money in the pool to pay that claim. When it looks like there may not be enough money in the pool to pay all the claims, then the rates go up. Insurance rates are set knowing the company will some day have to pay a claim.

SEN. PERRY asked if there was the threat of a lawsuit inherent in a claim and, if there is a consequence for a person to bring forth a claim, is there a potential lawsuit if the person bringing the claim or lawsuit loses.

Mr. Agnew responded the person filing the claim can bring a lawsuit. The negative consequence of losing the lawsuit is the claimant is not made whole.

SEN. JEFF MANGAN does not see a formal mediation or dispute resolution procedure provided in the bill. **SEN. MANGAN** noted the language on p. 7, lines 14-15, and wanted to know if you enter into a formal mediation, do sections 1 through 4 not apply with regard to timelines.

Mr. Chisholm stated the language was purposely placed in the bill because they did not want to infringe on the sanctity of a contract relationship already in place. They are educating their members and providing model contracts that contain dispute resolution procedures. Hopefully, this will be perceived favorably by companies writing liability insurance. In many instances in other states, the contractor was never given notice of the defect and, therefore, not given a chance to remedy the situation. They see this same behavior creeping into Montana. That is why they are trying to provide a notification process and a number of options for the contractor to respond.

SEN. AUBYN CURTISS told of a company in Libby that just folded because their insurance carrier would no longer insure them from alleged liability from asbestos exposure. **SEN. CURTISS** asked if this is an emerging problem in Montana and whether it is driving insurance rates nationwide.

Mr. Agnew stated insurance is a necessary evil because as businessmen, we cannot assume the risk. He does not see the insurance companies pulling the plug on industry after industry in Montana. Asbestos inclusions have been on policies for years, and he is not clear why the company closed down because of that exposure.

SEN. CURTISS asked who performs the inspections, if there are enough inspectors to do it in a timely manner, and who pays for the inspections.

Mr. Chisholm responded the inspections will, hopefully, be performed by the contractor at the contractor's cost. Once notified of the construction defect, they are hopeful the potentially responsible party will be allowed an opportunity to

inspect, at their cost, to determine how the defect can be fixed, or possibly even to dispute the alleged defect.

SEN. JERRY O'NEIL stated he may have a potential conflict of interest since the bill may give more business to mediators.

Closing by Sponsor:

SEN. McGEE closed saying this is a common-sense approach to the existing problem. Today's reality is there are insurance problems and increases and litigation problems and increases. The builders are caught in the middle. The ability of builders to purchase insurance is going by the wayside. This will allow the builders to fix problems through dispute resolution. To a degree, it is driven by insurance and lawyers. This bill is trying to help builders build homes in a cost-effective way.

HEARING ON SB 400

Sponsor: **SEN. KEN TOOLE, SD 27, Helena.**

Proponents: **Mike Halligan, Washington Corporation**
Pete Lawrens, Montana Rail Link
Pat Keim, Director of State Government Affairs, The Burlington Northern and Santa Fe Railway Company

Opponents: **None.**

Informational Witnesses:

Opening Statement by Sponsor:

SEN. TOOLE opened by stating there was a statute last session which tried to prevent railroad vandalism. This bill decreases and adjusts some of the penalties. Also, this bill will eliminate the sunset and make the statute permanent.

Proponents' Testimony:

Mike Halligan, representing Washington Corporation, informed the Committee the sunset was placed on the bill because they needed to see if railroad property really needed special legislation. The Montana Supreme Court and the United States Supreme Court in 1907 recognized the need for special legislation for railroads because of the hazardous nature of operating a railway, the protection of its employees, and the safety of the public. There are 18 trains a day which go across Montana Rail Link property

SEN. CURTISS expressed concern whether now is the proper time to be decreasing penalties in light of the fact Homeland Security is becoming more prevalent.

Mr. Halligan replied terrorism is very important, and they are very vigilant in being tied into the national alert system. **Mr. Halligan** responded the felony provision is still there and the 40 years is consistent with the goals of Homeland Security.

Closing by Sponsor:

SEN. TOOLE did not expound further and closed the hearing on SB 400.

EXECUTIVE ACTION ON SB 400

Motion/Vote: **SEN. McGEE** (?) moved **SB 400 DO PASS.** The motion **carried unanimously.**

EXECUTIVE ACTION ON SB 389

Motion/Vote: **SEN. PERRY** moved **SB 389 DO PASS.**

Discussion:

CHAIRMAN GRIMES asked **SEN. McGEE** if it is his intent that page 2, line 12, for professional to mean licensed and whether a person who is a home contractor would be included.

SEN. McGEE stated it means licensed in that particular section, but would not apply in the case of someone doing their own work, because how would you have an action against yourself.

Valencia Lane responded that **CHAIRMAN GRIMES** is concerned about non-licensed people and whether they would have protection of the act or if the homeowner builds his own home and sells it.

SEN. McGEE replied then that was not his intention.

CHAIRMAN GRIMES stated for the record this bill would not apply to anyone other than licensed professionals.

SEN. O'NEIL commented that he did not believe the word licensed needed to be in there because of current licensing laws. **SEN. O'NEIL** could envision wanting to hire someone who is not a contractor and this should apply to them as well.

SEN. WHEAT objected to taking executive action on **SB 389** because there are some serious issues he would like to take a look at.

Motion: **SEN. PERRY** withdrew his motion.

Note: **SEN. MANGAN** was excused from the remainder of the meeting due to illness.

HEARING ON SB 373

Sponsor: **SEN. RICK LAIBLE, SD 30, Victor.**

Proponents:
Rep. Verdell Jackson, HD 79, Kalispell
Julie Millam, Executive Director, Montana Family Coalition
Gilda Clancy, Eagle Forum of Montana
Harris Himes, Big Sky Christian Center
Dan Makowski, Superintendent, Flathead Valley Christian School
Ray Fuller, Superintendent, Rocky Mountain Christian High School
Earl Reimer, Superintendent, Flathead Valley Christian School
Clint Morey, Principal, Valley Christian School
Dudley Beard, Golf Professional at Meadowlark Country Club, Great Falls
Nicole Davis, Self
Shane Hoffner, Self
Rachel Davenport Haynes, Self
Trent Layton, Self
Steve Jackson, Self
Jackie Bryant, Flathead Valley Christian School
Paul Glidewell, Flathead Valley Christian Board
Lisa Ramsey, Flathead Valley Christian School
Richard Allen, Flathead Valley Christian School

Opponents:
Steve Meloy, Executive Secretary, Board of Public Education
Jim Haugen, Montana High School Association
Bob Vogel, Montana School Boards Association
Eric Feaver, Montana Education Association
Jock Anderson, Montana High School Association

Opening Statement by Sponsor:

SEN. LAIBLE brings SB 373, which addresses interscholastic high school sports. **SEN. LAIBLE** read from the Montana High School

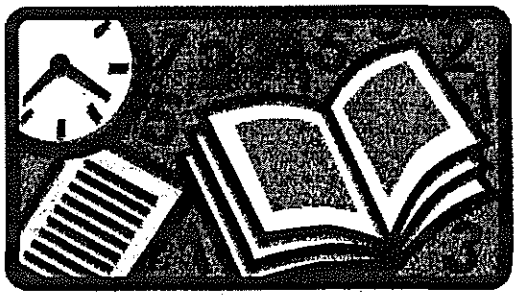


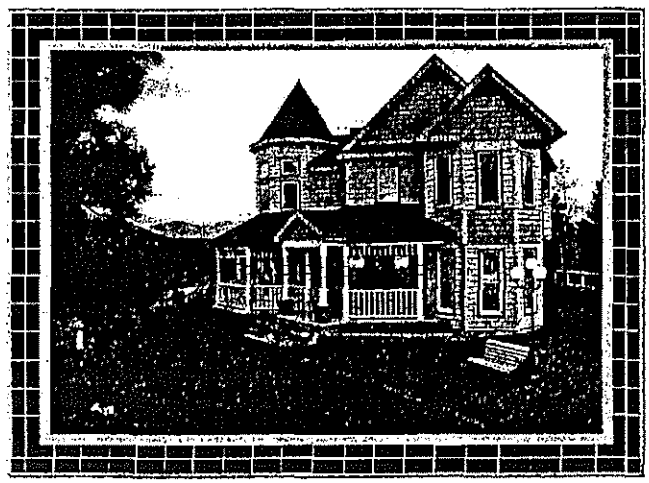
Exhibit: 1.

The following exhibit contains several pages, which exceeded the maximum amount that can be scanned.

If you wish to view this exhibit, please contact the:
Montana Historical Society
225 N. Roberts Street
Helena, MT 59601
(406) 444-4774

SENATE JUDICIARY
Exhibit No. 1
Date 2-19-03
Bill No. SB389

LIMITING LIABILITY IN LIGHT CONSTRUCTION



Model Contracts for Builders

Montana
Building
Industry
Association MBIA

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- from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

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Helena, Montana 59601
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E-mail: mbia@aol.com

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Model Contract between Contractor and Subcontractor 18

On the inside of the front cover of this publication is a computer disk which contains contract provisions for a contract between a contractor and owner, a one page annual contract between a contractor and subcontractor and a Mold Notice, Disclosure and Disclaimer.

Notification Process for Senate Bill 389

SENATE JUDICIARY
Exhibit No. 2
Date 2-19-03
Bill No.

Claimant triggers the process defined in Section 2 by serving notice on the Construction Professional (C.P.) claiming a construction defect and requiring remedy.

C.P. has **21 days** [section 2 (2)] within which to respond in writing and must propose one of three options:
1. offer to inspect
2. offer to monetarily settle without an inspection

3. dispute the claim — if claim is disputed — claimant may proceed to court — Rejects

Claimant has **30 days** [section 2 (3) (b)] within which to accept or *reject
1. offer to inspect
2. offer to monetarily settle without an inspection

If option (1) or (2) is rejected by the claimant at this step, claimant may proceed to court — Rejects

If option 1 (offer to inspect) is offered and accepted by claimant **then:**
C.P. inspects and then has **14 days** [section 2 (4) (b)] to propose 4 options:
a. offer to remedy the defect
b. offer to settle through monetary payment
c. offer to remedy via combination of (a) & (b)

d. reject any obligation — if option (d) is offered — claimant may proceed to court — Rejects

If **option 2** (offer to monetarily settle without an inspection) is accepted by claimant **then:**
The matter is presumed resolved.

Claimant has **30 days** within which to accept or reject options a, b, or c. [section 2 (4) (d)]. There is an obligation on the part of the claimant to either accept or reject the C.P.'s offer in writing and that document must be served upon the C.P. within 30 days after the offer was made - failure to notify the C.P. in writing within the 30 days time frame allows the C.P. to terminate the offer upon service in writing to the claimant.

IF claimant accepts option a, b, or c,
THEN: The matter is presumed resolved - (unless the C.P. fails to comply with the agreed upon timetable for completion of a, b, or c — then the claimant may proceed to court) — Rejects

IF claimant rejects option a, b, or c - **THEN:** The the claimant may proceed to court — Bring Action in Court

Section 4 – Limitation on Damages

(1) **IF** the claimant follows the process in Section 2,
THEN the claimant may recover the following:
. reasonable cost of repairs
. reasonable cost of temporary housing (if necessary)
. reduction in market value
. reasonable attorney fees

(2) **IF** the Construction Professional fails to make a reasonable offer, or fails to correct the construction defect, or fails to complete , in accordance with accepted construction standards, the necessary repairs specified in the offer;
THEN the limitations do not apply

(3) **IF** the claimant denies a offer to inspect, or unreasonably rejects an offer to remedy the defect, or unreasonably rejects an opportunity to remedy the defect;
THEN the claimant my not recover an amount in excess of
. a reasonable settlement offer made in Section 2 and
. the amount of reasonable attorney fees incurred by the claimant up to the time the offer was rejected

(4) The total damages awarded in a suit subject to Section 2 may not exceed the greater of
. the claimant's purchase price or
. the current fair market value of the home without the defect

#

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 2.19.03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE		✓	
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

DATE February 19, 2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 373 - SB 389 - SB 400

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
M.S. KAKUK	457-0970	MBIA	389		
RAM FULLER	442-3821	ROCKY MOUNTAIN CHRISTIAN HS.	373		
JOHN FRIED	452-5276	FOOTHILLS COM. CHRISTIAN SCH	373		
Pat Keim	447-2301	BNSF	400	X	
Eric Feaver	2-4250	MEA - MFT	373		X
Pete LAWRENCE	5231575	MT Rail Link	400	X	
DAN MAKOWSKI	755 0378	FVCS	373	X	
Robert Hitzeroth	457-0490	Rocky Mt Christian	373	X	
Steve Jackson	544-8197	Valley Christian Sch	373	X	
Clint Morey	542-6615	Valley Christian School	373	X	
Earle Reimer	542-2388	Valley Christian School	373	X	
Richard Allen	549-1876	Valley Christian	373	X	
Jackie Bryant	549-5214	Valley Christian	373	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 19, 2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 373, SB 389, SB 400

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Rachel Haynes	543 4896	Valley Christian	373	X	
Shane Hoffner	251-4463	Valley Christian	373	x	
Lisa Ramsey	251-0320	Valley Christian	373	X	
Nicole Davis	542-0427	Valley Christian	373	X	
Trent Layton	777-3382	Valley Christian	373	X	
Josh Ray	777-1062	Valley Christian	373	X	
Jesse Koepke	251-4768	Valley Christian	373	X	
Allen Lake	549-9917	Valley Christian	373	X	
Paul Glidewell	251-0037	Valley Christian School	373	X	
DUDLEY S. BEARD JR.	453-0242	FOOTHILLS COMMUNITY CHRISTIAN SCHOOL	373	X	
Harris Hines		Self	373	✓	
Jim Millan	431-3409	MFC	373	X	
GILDA CLANCY	443-7657	EAGLE FORUM	373	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 19, 2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 373 - SB 389 - SB 400

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Al McMilin	444-3128	OPI	373		
Jock Anderson	442-8560	MHSA	373		
Jim Haugen	442-6010	MHSA	373		
Frank A Jara	587-9311	Heritage Christian School Bozeman, MT	373		
Bill Pierce	443-4637	Pierce & Assoc. Bldrs.	389	✓	
Roger McGlenn	442-9555	IIAM	389	✓	
Roger Halver	459-0570	MT Asso. of Realtors	389	✓	
Jacqueline Lenmark	442-0230	Am. Ins. Assn	389	✓	
Steve Meloy	444-0300	Bd of Pub Ed	373		✓
Gary Van Horssen	442-0230	State Farm Ins Co	389	✓	
Jon Metropoulos	4426560	Farmers' / NAII	389	✓	
Mike Dalbye	523-1325	WASH. COOP	400	✓	
Vendell Jackson	444-4810	Staff	373	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 19, 2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 373, SB 389, SB400

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
BOB VOGEL	442-2780	MBSA	SB373		
Al Smith	443-3124	MTLA	SB389		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN DAN MCGEE**, on February 20, 2003 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	SB 419, 2/17/2003; SB 420, 2/17/2003; SB 421, 2/17/2003; SB 434, 2/18/2003
Executive Action:	SB 363; SB 373; SB 389; SB 394; SB 397; SB 419; SB 420; SB 421; SB 434

SEN. O'NEIL fails to see what we are gaining for the children by requiring the school be especially accredited. He feels allowing private and public schools to play basketball would help the children. He feels more harm will be done by refusing to let these children associate.

Vote: **SEN. MANGAN's** motion that **SB 373 BE AMENDED FAILED** by roll call vote.

Vote: **SEN. PERRY's** motion **SB 373 DO PASS carried** with **Senators Cromley, Mangan, Pease,** and **Wheat voting no.**

EXECUTIVE ACTION ON SB 389

Motion: **SEN. PERRY** moved **SB 389 DO PASS.**

Motion: **SEN. WHEAT** moved **Amendment SB038901.avl BE ADOPTED. EXHIBIT(jus38a14).**

Discussion:

SEN. WHEAT explained this is a friendly amendment. The testimony indicated that contractors are looking for notification that there is a problem and the ability to cure the defect. This bill, with **SEN. WHEAT's** proposed amendment, will still accomplish that result. The amendment also includes "contract specifications" or "accepted trade standards." Also, the amendment modifies the definition of "construction professionals" to make it consistent with the definition of "construction defect." Subsection (9) at the bottom of page 2 is stricken because it speaks to unforeseen acts of nature which is usually defined in the insurance policy. The meat of the bill, the new section (2), the word "related" will be struck on line 8. This will make it consistent throughout the bill that they are talking about construction defects. The amendment also provides for inspection "as agreed by the parties."

Instruction 12 addresses the written statement given to the homeowner by the construction professional if the construction professional decides not to proceed with a remedy.

The new subsection (3) dealing with admissibility is stricken by the amendment. **SEN. WHEAT** was not certain what was meant by structural failure, but did not feel it was inclusive of construction defects. **SEN. WHEAT** did, however, feel "construction defects" would include "structural failure." Therefore, the proposed amendment substitutes "construction defect" for "structural failure."

SEN. WHEAT stated **Curt 9Chisholm** did not want subsection (6) to be deleted. This subsection says whatever is in the statute does not supercede any contractual alternative dispute resolution procedures contained in the contract between the parties.

SEN. WHEAT closed by stating the proposed amendment will provide for a notification right, as well as a right to cure, for the contractors.

SEN. McGEE considers this to be a friendly amendment and hopes it receives unanimous support.

SEN. O'NEIL stated the proposed amendment, on page 3, line 8, deletes "until 60 days after the period of time during which the filing of an action is barred," and wondered if that language was picked up somewhere else in the bill.

SEN. WHEAT replied the language is unnecessary because the tolling of a statute of limitations is a legally defined event and if the bill states the statute of limitations for a construction defect is tolled, the court will understand what that means. It means once the notification goes out, the period of time for the statute to run stops until the procedure is either complied with or an action is filed in court.

SEN. PERRY asked if on page 5, section (3) is crossed out because those items are already admissible and, therefore, it is not necessary.

SEN. WHEAT replied that's true and if he is representing a homeowner and the contractor is on the stand, he is going to question the contractor about what he has done. All of this information will come out through examination and cross-examination of witnesses at trial.

SEN. PERRY again asked **SEN. WHEAT** if he was absolutely certain the language was included. **SEN. WHEAT** replied in his opinion, it is.

Vote: **SEN. WHEAT's** motion that **amendment SB038901.avl BE ADOPTED carried unanimously.**

Motion/Vote: **SEN. McGEE** moved **SB 389 DO PASS AS AMENDED.** The motion **carried unanimously.**

(Tape : 5; Side : B)

Amendments to Senate Bill No. 389
1st Reading Copy

Requested by Senator Mike Wheat

SENATE JUDICIARY
Exhibit No. 14
Date 2.20.03
Bill No. SB389

For the Senate Judiciary Committee

Prepared by Valencia Lane
February 21, 2003 (7:59am)

1. Page 1, line 23.
Strike: "4"
Insert: "3"

2. Page 2, line 5 through line 6.
Following: "out of the" on line 5
Strike: remainder of line 5 through "planning," on line 6

3. Page 2, line 6.
Following: "supervision,"
Strike: "inspection,"

4. Page 2, line 11.
Following: "with"
Insert: "contract specifications or"

5. Page 2, line 12.
Following: "means"
Strike: "an architect,"
Insert: "a"
Following: "contractor,"
Insert: "or"
Following: "subcontractor"
Strike: ","

6. Page 2, line 13.
Following: line 12
Strike: "engineer, or inspector"
Following: "the"
Strike: "design, specification, surveying,"

7. Page 2, line 13 through line 14.
Following: "supervision" on line 13
Strike: remainder of line 13 through "observation" on line 14

8. Page 2, line 26 through line 29.

Strike: subsection (9) in its entirety

9. Page 3, line 8.
Following: line 7
Strike: "construction-related"
Insert: "construction defect"

10. Page 3, line 8 through line 9.
Following: "tolled" on line 8
Strike: remainder of line 8 through "barred" on line 9

11. Page 4, line 2 through line 3.
Following: "residence" on line 2
Strike: remainder of line 2 through "hours" on line 3
Insert: ", as agreed by the parties,"

12. Page 4, line 12.
Following: "statement"
Strike: "that"
Insert: "setting forth the reasons why"

13. Page 4, line 27.
Strike: "subsection"
Insert: "subsections"
Following: "(4)(b)(i)"
Insert: "or (4)(b)(iii)"

14. Page 5, line 5.
Strike: "4"
Insert: "3"

15. Page 5, line 10 through line 12.
Strike: subsection (8) in its entirety
Insert: "(8) This section may not be enforced unless the homeowner has been given written notice of the requirements of [sections 1 through 3]."

16. Page 5, line 14 through line 22.
Strike: section 3 in its entirety
Renumber: subsequent sections

17. Page 5, line 24.
Strike: "**Residential construction**"
Insert: "**Construction defect**"
Following: "--"

Strike: "**limitation on**"

18. Page 6, line 1.
Following: "due to"
Strike: "structural failure"
Insert: "a construction defect"

19. Page 6, line 2.
Following: "reasonable"
Insert: "costs"
Following: "and"
Strike: "necessary"

20. Page 6, line 3 through page 7, line 13.
Strike: subsections (2) through (5) in their entirety
Renumber: subsequent subsection

21. Page 7, line 14.
Strike: "4"
Insert: "3"

22. Page 8, line 7.
Strike: "4"
Insert: "3"

23. Page 8, line 9.
Strike: "4"
Insert: "3"

- END -

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 2.20.03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE			
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 389** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Duane Grimes, Chair

And, that such amendments read:

1. Page 1, line 23.
Strike: "4"
Insert: "3"

2. Page 2, line 5 through line 6.
Following: "out of the" on line 5
Strike: remainder of line 5 through "planning," on line 6

3. Page 2, line 6.
Following: "supervision,"
Strike: "inspection,"

4. Page 2, line 11.
Following: "with"
Insert: "contract specifications or"

5. Page 2, line 12.
Following: "means"
Strike: "an architect,"
Insert: "a"
Following: "contractor,"
Insert: "or"
Following: "subcontractor"
Strike: ","

Committee Vote:
Yes 9, No 0.

6. Page 2, line 13.
Following: line 12
Strike: "engineer, or inspector"
Following: "the"
Strike: "design, specification, surveying,"

7. Page 2, line 13 through line 14.
Following: "supervision" on line 13
Strike: remainder of line 13 through "observation" on line 14

8. Page 2, line 26 through line 29.
Strike: subsection (9) in its entirety

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Strike: "construction-related"
Insert: "construction defect"

10. Page 3, line 8 through line 9.
Following: "tolled" on line 8
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Following: "residence" on line 2
Strike: remainder of line 2 through "hours" on line 3
Insert: ", as agreed by the parties,"

12. Page 4, line 12.
Following: "statement"
Strike: "that"
Insert: "setting forth the reasons why"

13. Page 4, line 27.
Strike: "subsection"
Insert: "subsections"
Following: "(4)(b)(i)"
Insert: "or (4)(b)(iii)"

14. Page 5, line 5.
Strike: "4"
Insert: "3"

15. Page 5, line 10 through line 12.
Strike: subsection (8) in its entirety
Insert: "(8) This section may not be enforced unless the homeowner has been given written notice of the requirements of [sections 1 through 3]."

16. Page 5, line 14 through line 22.
Strike: section 3 in its entirety
Renumber: subsequent sections

17. Page 5, line 24.
Strike: "**Residential construction**"
Insert: "**Construction defect**"
Following: "--"
Strike: "**limitation on**"

18. Page 6, line 1.
Following: "due to"
Strike: "structural failure"
Insert: "a construction defect"

19. Page 6, line 2.
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Following: "and"
Strike: "necessary"

20. Page 6, line 3 through page 7, line 13.
Strike: subsections (2) through (5) in their entirety
Renumber: subsequent subsection

21. Page 7, line 14.
Strike: "4"
Insert: "3"

22. Page 8, line 7.
Strike: "4"

Insert: "3"

23. Page 8, line 9.
Strike: "4"
Insert: "3"

- END -

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2.20.03 BILL # SB 389 AMENDMENT # _____

MOTION: Wheat's motion to amend.

NAME	AYE	NO
SEN. BRENT CROMLEY		
SEN. AUBYN CURTISS		
SEN. JEFF MANGAN		
SEN. JERRY O'NEIL		
SEN. GERALD PEASE		
SEN. GARY PERRY		
SEN. MIKE WHEAT		
SEN. DAN MCGEE, VICE CHAIRMAN		
SEN. DUANE GRIMES, CHAIRMAN		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on April 1, 2003 at 10:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 402 (3/27/03); SB 389 (3/27/03); SB 432 (3/27/03)

REP. MORGAN asked Mr. Olson about the fiscal note. She said there was no offset for income tax or penalties. **Mr. Olson** said anything regarding taxes would be determined by the Department of Revenue.
{Tape: 1; Side: B; Approx. Time Counter: 133 - 169}

REP. GALLIK asked Ms. Blazer questions regarding mortgage bankers and their exemption from this legislation. **Ms. Blazer** said the bill could be amended to contain this information.
{Tape: 1; Side: B; Approx. Time Counter: 169 - 254}

REP. KEANE asked Ms. Blazer if an out-of-state mortgage broker or banker could work through a Montana firm and therefore transact business in Montana. **Ms. Blazer** said they could if the physical location truly was in Montana.
{Tape: 1; Side: B; Approx. Time Counter: 254 - 414}

Closing by Sponsor:

The Sponsor closed.
{Tape: 1; Side: B; Approx. Time Counter: 414 - 495}

HEARING ON SB 389

Sponsor: **SEN. DAN McGEE, SD 11, Laurel**

Opening Statement by Sponsor:

SEN. McGEE said this bill provides an alternative dispute resolution procedure for residential construction disputes. It requires a claimant with an alleged construction defect to file a Notice of Claim with the construction professional that the claimant asserts is responsible for the defect and provide the construction professional with the opportunity to resolve the claim without litigation. It limits damages that can be recovered in residential construction disputes.
{Tape: ; Side: A; Approx. Time Counter: 1 - 38}

Proponents' Testimony:

Byron Roberts, Montana Building Industry Association, said this legislation was developed in response to the recent and ongoing events in the insurance industry. This bill is one solution in a number of solutions to try to bring this insurance back around to Montana builders. This legislation is an important step in the process.
{Tape: 2; Side: A; Approx. Time Counter: 35 - 90}

Curt Chisholm, Montana Building Industry Association, presented a copy of the Notification Process for Senate Bill 389 which explaines this bill.
EXHIBIT(buh69a09)
{Tape: 2; Side: A; Approx. Time Counter: 90 - 135}

Bill Pierce, Helena building contractor, said he was a builder of custom residential homes. The building industry in Montana is facing an insurance availability crisis which is one of the primary reasons for this legislation. Steps need to be taken to create an environment in Montana that is more predictable for these insurance carriers so the construction people can gradually reduce the premiums for insurance.
{Tape: 2; Side: A; Approx. Time Counter: 135 - 190}

Mark Biegler, Western States Insurance, said they strongly support this bill. He said the insurance companies were in a hard insurance market now. A hard insurance market is a time when insurance carriers increase their prices significantly as well as decrease their appetite for different classes of business.
{Tape: 2; Side: A; Approx. Time Counter: 190 - 278}

Roger McGlenn, Executive Director, Independent Insurance Agents Association of Montana, said he supports this bill. He also stated that he wants the record to show that Jacqueline Lenmark and Greg Van Horssen wished to have their names on record as supporting this bill.
{Tape: 1; Side: B; Approx. Time Counter: 278 - 298}

Roger Halver, American Association of Realtors, said he supports this bill.
{Tape: 2; Side: A; Approx. Time Counter: 298 - 344}

Al Smith, Montana Trial Lawyers Association, said they support this bill.
{Tape: 2; Side: A; Approx. Time Counter: 344 - 420}

Opponents' Testimony: None

Informational Testimony: **None**

Questions from Committee Members and Responses: None

Closing by Sponsor:

The Sponsor closed and indicated REP. BRUEGGEMAN will be carrying this bill on the House Floor.
{Tape: 2; Side: B; Approx. Time Counter: 83 - 111}

HEARING ON SB 432

Sponsor: **SEN. DUANE GRIMES, SD 20, Clancy**

Opening Statement by Sponsor:

SEN. GRIMES said this bill provides licensure of real estate appraisal trainees who are authorized only to assist a certified real estate appraiser in the performance of an appraisal assignment.
{Tape: 2; Side: B Approx. Time Counter: 111 - 123}

Proponents' Testimony:

Jim Brown, Business Services Division, Department of Labor & Industry, provided written testimony.
EXHIBIT(buh69a10)
{Tape: 2; Side: B; Approx. Time Counter: 123 - 157}

Tim Moore, Chairman, State Board of Appraisers, said there are no guidelines under which apprentice appraisers are trained. There is a wide variation throughout the State regarding how trainees are getting their experience requirements. This bill will go a long way toward evening the playing field to make certain everyone is being trained in the same standard.
{Tape: 2; Side: B; Approx. Time Counter: 157 - 171}

Jan Martin, State Board of Appraisers, said she supports this bill.
{Tape: 2; Side: B; Approx. Time Counter: 171 - 175}

Billie Bearcamp, Investigator, State Board of Appraisers, said she supports this bill.
{Tape: 2; Side: B; Approx. Time Counter: 175 - 187}

Opponents' Testimony: None

Informational Testimony: None

Notification Process for Senate Bill 389

Claimant triggers the process defined in Section 2 by serving notice on the Construction Professional (C.P.) claiming a construction defect and requiring remedy.

C.P. has **21 days** [section 2 (2)] within which to respond in writing and must propose one of three options:
1. offer to inspect
2. offer to monetarily settle without an inspection

3. dispute the claim ——— if claim is disputed ——— claimant may proceed to court — Rejects

Claimant has **30 days** [section 2 (3) (b)] within which to accept or *reject
1. offer to inspect
2. offer to monetarily settle without an inspection

If option (1) or (2) is rejected by the claimant at this step, claimant may proceed to court — Rejects

If option 1 (offer to inspect) is offered and accepted by claimant then:
C.P. inspects and then has **14 days** [section 2 (4) (b)] to propose 4 options:
a. offer to remedy the defect
b. offer to settle through monetary payment
c. offer to remedy via combination of (a) & (b)

d. reject any obligation ——— if option (d) is offered ——— claimant may proceed to court — Rejects

If option 2 (offer to monetarily settle without an inspection) is accepted by claimant then:
The matter is presumed resolved.

Claimant has **30 days** within which to accept or reject options a, b, or c. [section 2 (4) (d)]. There is an obligation on the part of the claimant to either accept or reject the C.P.'s offer in writing and that document must be served upon the C.P. within 30 days after the offer was made - failure to notify the C.P. in writing within the 30 days time frame allows the C.P. to terminate the offer upon service in writing to the claimant.

IF claimant accepts option a, b, or c,
THEN: The matter is presumed resolved - (unless the C.P. fails to comply with the agreed upon timetable for completion of a, b, or c ——— then the claimant may proceed to court) — Rejects

IF claimant rejects option a, b, or c - **THEN:** The the claimant may proceed to court — Bring Action in Court

EXHIBIT 4
DATE 4-1-05
SB 389

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 4-1-03

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

Montana House of Representatives
Visitors Register

BUSINESS & LABOR COMMITTEE Date 4/1/03

Bill No. HB 389 Sponsor(s) M. Gee

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Greg Van Hoossen	State Farm	X		
Jacqueline Lenmark	AIA	X		
Roger McGlenn	IIAM	X		
Roger Halver	MT Assn Realtors	X		
Byron Roberts	MT Building Ind Assn	X		
MARK BIEGLER	INSURANCE INF.			
Doug Eaton	Farmers	K		
M.S. KAKUK	MTBIA	V		
Jacqueline Lynmark	Am. Ins. Assn	V		
Bill Pierce	Pierce & Assoc. Bldrs	V		
Al Smith	MTBIA	V		
CURT CHISHOLM	MTBIA	V		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on April 2, 2003 at 9:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: Rep. Donald Steinbeisser, Vice Chairman (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None

Executive Action: SB 432 Be Concurred In; SB 389 Be Concurred In; SB 444 Be Concurred In As Amended; SB 402 Be Concurred In As Amended; SB 235 Tabled; SB 46 Be Concurred In As Amended; SB 415 Remove from being tabled - failed;

EXECUTIVE ACTION ON SB 432

{Tape: 1; Side: A; Approx. Time Counter: 1 - 500}

Motion/Vote: **REP. KEANE moved that SB 432 BE CONCURRED IN. Motion carried 18-0** with CHAIRMAN McKENNEY giving a voice vote for REP. STEINBEISSER.

Motion/Vote: **REP. MORGAN moved SB 432 BE PLACED ON THE CONSENT CALENDAR. Motion carried 18-0** with CHAIRMAN McKENNEY giving a voice vote for REP. STEINBEISSER.

REP. GALLIK will carry the bill on the House Floor.

EXECUTIVE ACTION ON SB 389

Motion: **REP. MORGAN moved that SB 389 BE CONCURRED IN.**

Motion: **REP. MORGAN moved that SB 389 BE AMENDED. EXHIBIT(buh70a01)**

Discussion:

Mr. Campbell explained the amendments.

Vote: **Motion failed 9-9 to adopt AMENDMENTS with REPS. KEANE, HAWK, WILSON, FRITZ, LAWSON, GALLIK, BERGREN, GALVIN-HALCRO voting no** and CHAIRMAN McKENNEY giving a voice vote for REP. STEINBEISSER.

Vote: **Motion carried 15-3 with REPS. WILSON, WEISS, GALVIN-HALCRO voting no** and CHAIRMAN McKENNEY giving a voice vote for REP. STEINBEISSER.

REP. BRUEGGEMAN will carry the bill on the House Floor.

EXHIBIT 1
DATE 4-2-03
SB 389

Amendments to Senate Bill No. 389
3rd Reading Copy

Requested by Representative Rick Maedje

For the House Business and Labor Committee

Prepared by Bartley Campbell
April 1, 2003 (1:15pm)

1. Page 2, line 24.
Following: "system."
Insert: "The term includes detached structures and other improvements to the house or unit that are located on a lot or common area that includes the house or unit."

- END -

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 4-2-03

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY			✓
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

/s/Bus&LaborRollCall.2003

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 389** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Joe McKenney, Chair

To be carried by Representative John Brueggeman

- END -

Committee Vote:
Yes 15, No 3.

701000SC.hhn

4-3-03